



May 16, 2000

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2000-1939

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135233.

The Travis County Sheriff's Department (the "department") received a request for information related to the injury of a county jail inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim. However, you have not submitted information for our review.

Pursuant to section 552.301(e)(4), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested. A governmental body's failure to submit the information required in section 552.301(e) within the specified time limits results in the legal presumption that the information is public and must be released. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Gov't Code § 552.302. Waiver of applicable permissive exceptions may be a consequence of failure to comply with your obligations under section 552.301. Your section 552.103 assertion is not a compelling reason to overcome the presumption of openness. Open Records Decision No. 473 (1987).

You also assert the requestor seeks confidential medical records. The Texas Medical Practice Act (the "MPA"), Title 3, Subtitle B of the Occupations Code, provides in section 159.002(b):

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided in this chapter.

Thus, the MPA affords confidentiality to medical records. Section 159.004(5) provides an exception to the privilege of confidentiality when the requestor has the written consent of the patient or is authorized to act on the patients behalf, as provided by section 159.005. You assert that the requestor has not satisfied the requirements for set out in section 159.005.

The MPA is a confidentiality provision which could serve as a basis to withhold information. However, without the specific information requested, or a representative sample, submitted for our review, we cannot conclude there exists a compelling interest to overcome the presumption that the information at issue is public. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the department must release to the requestor the information responsive to the request. We caution the department that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/CHS/ljp

Ref: ID# 135233

cc: Ms. Kelly Randolph Evans
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(w/o enclosures)